

JEFFERSON COUNTY COMMISSIONERS
COURTHOUSE, BOX H
BOULDER, MT 59632
PHONE 406-225-4025
FAX 406-225-4148

TOM LYTHGOE, CHAIR

CHUCK NOTBOHM

KEN WEBER

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
January 31, 2006**

Present: Commissioners Lythgoe, Notbohm and Weber; Matt Johnson, County Attorney; Ben Sautter, Road Supervisor; Marga Lincoln, *Helena Independent Record*; Jan Anderson, *Boulder Monitor/Jefferson County Courier*; Glenn Marx, *Whitehall Ledger*; Tom Harrington, JLDC; Alan Wright, MMUA; Shane Coleman, Holland and Hart; Tracy Fortner, MMUA; Kerry White, CBU; Mike Korn, FWP; Duane Harp, USFS; Mary Sexton, DNRC; Tim Hall, DNRC; Bruce Ramsey, USFS; Kevin Riordan, USFS; Tim Ravendal, MMUA; Dick Bruins, MMUA; Rick Hotaling, BLM; Terry Sexton, USFS; Jim McCauley, Bud Smith, Pete Gibeau, John Wright, Lieta Beardsley, Jim and Evelyn Reynolds, Jim Haslip, John and Dorothy Lake, Sam Samson, Greg Duncan, Garry Pace, Clinton Kane

MINUTES

Commissioner Lythgoe moved to approve the January 24 minutes. Commissioner Weber seconded.

CALENDAR REVIEW

1/31 Public meeting regarding proposed meth treatment facility - 7:00
2/02 conference - Butte - 8:00
2/08 TSEP seminar - Billings - 8:00

COMMISSION REPORTS

JLDC

Commissioner Lythgoe reported that he attended a JLDC meeting on Wednesday. He stated that it was business as usual.

MEETING WITH LEWIS AND CLARK COUNTY COMMISSION

Commissioner Lythgoe reported that on Thursday, he and Commissioner Weber met with the Lewis and Clark Commission, their County Attorney and Planner and Joe Schmaus to discuss Tucker Gulch and Holmes Gulch Roads. Joe owns mining claims in Jefferson County which have two accesses, the best of which is up Tucker Gulch. There is definitely a problem with where the road is located. The public works director, deputy county attorney and planner from

Lewis and Clark County will look at the Lewis and Clark side. His impression is that they will contact us and then we will have a joint meeting with all involved.

They also discussed Highway 282. Jefferson County will take the lead on putting together a letter to the Highway Commission requesting that 282 be made a secondary road rather than a x-route for all to sign. He stated that this is a pretty important piece of road.

ASSISTANT PLANNER

Commissioner Lythgoe reported that he, Harold Stepper, JoAnn Samson and Gerry Keogh made up the interview committee for the assistant planner. A recommendation has been made to the personnel officer. Hopefully, they will have an answer in the next couple days. This is a pretty qualified applicant, who will be an asset to the County.

MONTANA TUNNELS

Commissioner Lythgoe reported that the Commission received two faxes from Montana Tunnels the previous day. The first one hit like a ton of bricks. By the time he got home, he thought maybe he had read it wrong. The second fax said something different. He spoke to Tim Smith, and there is a legal requirement to give employees a 60-day notice of possible mine closure. Tunnels is still pursuing funding to keep the mine open.

MEETING PREPARATION

Commissioner Weber reported that the Commission held a meeting on Wednesday afternoon to discuss this meeting. However, some members of the public were in attendance and took most of the allotted time.

SOLID WASTE SAFETY

Commissioner Weber reported that a Solid Waste safety meeting was held on the 26th. They are very focused on staying safe, and trying to raise awareness.

CENTRAL SERVICE AREA AUTHORITY

Commissioner Weber reported that he attended a CSAA meeting in Helena on Friday. He stated that 51% of the group must be made up of family members or clients, and the other 49% is made up of providers and interested parties. There are fifteen counties working together to come up with by-laws. In April, they will meet again and will set up a sitting committee. He stated that it is tough to take fifteen counties and coordinate all of the issues. The state has made a commitment to work with the group.

SOLID WASTE ASSESSMENTS

Commissioner Weber reported that the Commission met with the Solid Waste Department, the Department of Revenue and the Treasurer the previous day to discuss how Solid Waste fees are assessed, how they are put on the system, etc. It will take some time to develop strategies to deal with all the questions.

EMERGENCY COMMUNICATIONS

Commissioner Weber reported that he met with a ham radio operator who is part of a network that would be able to communicate in a disaster situation if all the power was out. He stated that

there are some batteries at the Solid Waste site that could be used. He told Ben that this is a management decision.

WHITEHALL SKATE PARK

Commissioner Weber stated that he was not able to attend the skate park meeting, but Montana Rail Link did give the Town of Whitehall permission to put the skate park on MRL land on Legion Street.

JUVENILE DETENTION

Commissioner Notbohm reported that he attended a Juvenile Detention meeting in Galen on Thursday. There was a lot to discuss at this meeting. Jefferson County is in good shape compared to the last two years. The state is running out of space to house juveniles, but money-wise, we are doing well.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

DISCUSS FEDERAL AND STATE AGENCIES' RESPONSIBILITY TO JEFFERSON COUNTY AS IT RELATES TO IMPEDING THE PUBLIC'S ABILITY TO ACCESS FOREST SERVICE, BLM AND STATE LANDS

Commissioner Lythgoe welcomed those in attendance and outlined the course of the meeting. The Commissioners will speak first, followed by agencies, then it will be opened for public comment. It may be necessary to limit speaking time to allow everyone the opportunity to speak. He stated that he feels the Commission has always had a good relationship with the Forest Service, BLM and other agencies. This issue was not brought up to be confrontational, but because they feel that it is a legitimate issue. He then turned the meeting over to Commissioner Notbohm.

Commissioner Notbohm stated that he put together and sent out a letter on December 13, 2005 regarding the Commission's position as to roads and rights-of-way in Jefferson County. He then read the letter. He stated that to take this a little further, when any roadless designation is made on a road, it might as well be called a wilderness area, as it has the same effect; it shuts the area down. Mining, timber harvest, etc. are all closed. The Governor has asked them to identify where new roads might be needed, but they currently have enough roads, they don't need any more. He noted that there is a proper way to close a road, and all agencies should come before the Commission, as they are the governing body and the county is their responsibility.

Commissioner Weber stated that since the letter was sent out, he has done a lot of research on this issue, which is large. He stated that there are two overlapping issues here, the President's request to governors regarding roadless areas, and what constitutes a right-of-way. At today's meeting, we will be dealing with county right-of-way, why they exist and why they are maintained as a county right-of-way. The land management areas that will be addressed in today's discussion deal more with our right-of-way, RS2477 and the granting of rights-of-way and who is responsible for them once they are granted. Commissioner Weber noted that the 1800s were a long time ago, but they still hold sway when granted. In the north end, Holmes Gulch and Tucker Gulch were granted years ago, and were never maintained. This went to the

Supreme Court, and it was decided that once a right-of-way has been granted to the County, the County is responsible for the road. Lack of use does not constitute abandonment. There are a lot of right-of-way out there that may not be needed, or need to be opened for various reasons. Jefferson County needs to establish that rights-of-way are our responsibility and we need to deal with them. This is what today's discussion is going to be about, not public lands management.

Commissioner Lythgoe then called for any agencies who would like to speak.

Kevin Riordan, with the Helena National Forest, thanked the Commissioners for the explanation. He stated that he is not an attorney, and is not here to be argumentative or combative. He noted that the Forest Service and Commission have had good relations in the past. If RS2477 is the issue, he noted that there is a process and procedure that they can work with. As for the Commission's letter and the perception of not being involved in decisions, they can all work towards addressing those issues. Commissioner Lythgoe stated that he would like to comment that this is correct; the Commission and Forest Service have had a great working relationship. As to this issue, he doesn't think that the Forest Service or BLM has come to the County regarding road closures. He is comfortable with the working relationship, but when it comes to roads, these agencies have not been forthcoming with information. He is not an expert, but from the reports he gets back from the public, there is a concern that roads are being shut down and areas are being closed. He thought that it was appropriate to bring this to the table for discussion.

Rick Hotaling, BLM, stated that he agrees with what Kevin said; he feels that they do have a good working relationship. Everyone is looking for the same common ground, and they are ready to work with the Commission on these issues.

Mike Korn, with Fish, Wildlife and Parks, stated that basically, he is here to answer questions. He stated that Jefferson County has 128,000 acres of block management, a private lands program that works with landowners to provide hunter access. As far as road issues go, they do not close roads or rights-of-way without a process. They don't own lands, but he is happy to answer questions regarding block management. He has enjoyed the working relationship with the Commission. Commissioner Weber stated that he has one instance that he can discuss with Mike. He too enjoys the working relationship that they have with the agencies.

Mary Sexton, with DNRC, stated that they do have state lands, they do have easements across state lands and work with counties in these areas. They also have other easements with private citizens and other state agencies.

Commissioner Notbohm stated that of all the people from the various agencies that he has met, he has met none that he doesn't like and respect. The Commission has worked with agencies on maintenance agreements, etc. There have been a few disappointments in the past, such as Lump Gulch. The County and Forest Service made a commitment to work together on the road, and then the Forest Service pulled back the money. However, they still had money to go up and block some roads, which he has never seen done before. The County lost the money to fix the road, which still needs fixing. The Commission hasn't taken part in the decision to close roads or areas. The other issue he has with the Forest Service is the Elkhorn Cemetery. This is very

disappointing, and while this is not the purpose of today's meeting, it is still a disappointment. He does understand that a lot of this comes from higher up.

Clinton Kane, from Bozeman, stated that for the last ten or fifteen years he has been studying the jurisdiction on federal, state and local lands. He would suggest to the Forest Service, BLM and Commission to get the BLM and Forest Service resolution on roads in Nye County, Nevada; it could help them decide on some road issues. As a result of his research, he has come to the conclusion that the federal government doesn't own one stick of land in Montana or any western states.

Kerry White, also from Bozeman, stated that he is a member of the Gallatin County Planning Board, and Citizen for Balanced Use. He stated that a couple weeks ago, they brought the issue of roadless areas before the Gallatin County Commission. They met with an environmental group to draft a letter to the governor. He urged the Commission to identify roads and trails within roadless areas when the presentation is made to the governor. If roadless areas are turned into wilderness, there won't be much left. He stated that only 3% of people recreate in wilderness areas; 97% recreate in multi-use areas. In the petition process, it is important to include maps with roadless areas marked. In May of last year, he attended a public road law meeting, half of which was dedicated to RS2477. The head attorney for the Forest Service did the seminar. The meaning of the word highway is any means to travel: foot, waterway, bridge, prior to the formation of the Forest Service. A 1988 policy also stated that a trail or footpath could meet the definition of a highway.

Leita Beardsley presented some informational papers to the Commission, and stated that she would like to thank the Commission for questioning this. There is a lot of information on local agencies, but it always goes higher. She noted that the federal government really should go through the county sheriff if they want to close a road. She showed a map of the wildlands project, and said that this is where the Commission needs to start. What is really going on comes down to Sustainable America, on which President Clinton signed an executive order. There is a chain of command right down to the local level. She said that it is time to get serious about this. They also need to get serious about researching who is financing these environmental groups.

Peter Gibeau, from Bozeman, stated that the RS2477 grant left no room for the wilderness act. He said that they are doing exactly what they are supposed to be doing.

Jim Haslip stated that he has heard that the roadless act proposes to close no more roads, but the fact is that there is nothing left to close. In the Clancy quad, there is only one road left open. In five miles of road, there are 25 spur roads that are closed. He has a cabin, and he likes to take his grandchildren up there. However, he can't get off the road to take his grandkids sightseeing. Jim stated that he retired in 1983, and it was about that time that roads started to be closed. It seems like the roadless areas are for the physically and financially fit. The elderly, people with young children, etc. can't use these areas. He recently read that the Forest Service has been given more money. He is not sure what they are using it for. Jim stated that he will be flying his 46th year as an aerial observer with the Forest Service. He said that we have been lucky recently, but what if there are multiple lightning starts in a roadless area, how will they attack

the fire and stop it early. Roads are used as anchor points for air and ground attacks. If they had been able to use the road to attack the Warm Springs fire in 1988, they could have kept the fire much smaller. Commissioner Weber asked, as tactical support, if there is a minimum number of acres that need to be involved before you hit the trigger to go to tankers. Jim stated that it is up to the person on the ground to decide, and it depends on conditions, such as if there are dwellings threatened, the terrain, and the weather.

Sam Samson, Boulder resident and former Commissioner, thanked the Commission for having this meeting, although they might not appreciate what he has to say. He came to the meeting to respond to Commissioner Notbohm's statement in the *Helena Independent Record* and also to the Commissioners' letter. He then read a letter into the record. (*On file in the Clerk and Recorder's Office.*) Commissioner Notbohm stated that he does not take offense to what Sam said; they can agree to disagree. He said that anytime they have a designation, it in fact does do exactly what he says; closes everything to future use. Sam asked what designations Commissioner Notbohm was talking about. Commissioner Notbohm gave the Elkhorns as an example. There are very few places that you can go unless you are on foot or on a horse. However, there are county roads up there. Sam stated that he just wanted to get the message across that past Commissions have worked to open access to federal lands. Commissioner Notbohm stated that all rights-of-way, including what the feds have, are county roads, and all finger roads off of the main roads are also rights-of-way.

Brud Smith, retired attorney and rancher in the Boulder Valley, stated that he knows the frustration of closures. He said that the Commission has to be careful of the position they take, as they might do more harm than good. The Commission's letter took a strong stance, but if this gets into federal court, the burden of proof will be on the County. He encouraged the Commission to read the opinion on the case that he was on, in which Judge Lovell's opinion was against the County. He noted that the County may not be able to take action on some of these issues, but a private group could. They also need to be aware of the potential costs, both of litigation and the possible requirement to maintain the roads. He would also advocate that sometimes negotiations are important, and the Commission needs to work with all avenues available.

Commissioner Lythgoe stated that they aren't going to be sending any road crews out to break down gates, etc. He feels that negotiation is the appropriate avenue. None of the Commissioners are intimidated by the feds, and they all have a good working relationship.

Commissioner Notbohm stated that the thing with negotiations, he feels it would be treated like the Elkhorn Cemetery, and he won't live that long.

Tim Ravndal, Montana Multiple Use Association, stated that the focus of today's meeting is roads, but it is hard to discuss roads only, as they are tied in with roadless and wilderness areas. He said that there are a lot of associations working together, and he has been involved in lots of issues with the Forest Service. Holmes Gulch was mentioned earlier, and this is a classic example of a RS-2477 case, which is still not resolved. The public right-of-way was granted before 1906, and this was fully documented. Most of the roads in the county were in existence

before 1906, and were created for the purpose of extracting materials. The Whitetail/Haystack area, a roadless area in the Beaverhead-Deerlodge National Forest, is riddled with old mining and logging roads. He questioned how this area can be labeled roadless, considering the amount of roads in the area. He stated that there is a lot of game in the area, and access is important, for hunting, recreation and also for livestock transportation. Timber is a contentious issue. During the 50s and 60s, the Forest Service built local and arterial roads, and these were put in place to manage timber. They start closing these roads, and then lose the transportation system to manage forest needs. As for mining, access bore mining in Jefferson County is like no other in the area. These roads were created for exploration and extraction. There were 41 mining claims within the Whitetail/Haystack area in the late 1980s. Tim stated that the only thing that can replace the revenue from a mine is another mine, and reiterated that access is important. In the Elkhorn Management Area, the map is a working project. Wilderness designations have shut down 99.9% of mining and exploration. He noted that they have been in negotiations for 30 years to keep public lands open, and they are still losing.

Jim McCauley, a Jefferson County Commissioner from 1985 to 1991, stated that he would like to take a few minutes and give an overview of what he has seen in his lifetime. When he became a Commissioner, there was no legal road book. All that they had was a red folder with about 40 entries. In 1986, they found documents regarding roads in the basement that had been sent from Radersburg. This started the process of cataloging the roads. Per state law, the County must have a road book with the legal description, maps, and history of the roads. This took many years, but Jefferson County now has a useable document for research. What Commissioner Samson accomplished with the inventory is incredible, but the job is still not done. What they are dealing with today is frustration, and that is what prompted this meeting; they all deal with this frustration from their personal point of view. It was in the 1970s and 1980s when there was a large thrust to close roads. In 1978 there was a push to close the North Fork of Little Boulder, and they lost every arterial road. They asked for retrieval rights, and were told no. It is ridiculous now, with the overpopulation of game. He feels that this has come up because of frustration, where to go, how to get there, etc. The closure of the Little Boulder drainage was supposed to be a temporary closure, and that was 10 years ago. This is against the law, even by federal law. In dealing with these issues, he was very involved until 1999, when he backed off. He feels that communication is very important, but from 1994 continuing through today, there is what he calls a revolving door on the forest supervisor's office. They are all very nice people and good to work with, but they didn't know anything because they were not here long enough to know what is going on. He stated that this is very frustrating. He stated that in the Bull Mountains, in the 60 years he has lived here, he has seen closures on Bull Mountain both private and public. On this side, there is no year-round access anywhere, and something is wrong with this. The Hadley Park issue was unfairly settled because there was no public input; the public was taken out of the process. Since he was a Commissioner, he has seen a lot of changes, particularly in state law, that allow certain things to happen. He feels that the Commission is better able to deal with these issues. Jim stated that he has come to the conclusion that there is only one way to deal with this; to invoke RS-2477 and prescriptive rights in Jefferson County, rather than taking this one road at a time. We need to get this defined and we need to know where we're at. He stated that they need to support the Commission and see how this is going to play out. He noted that there is a lot of support out there. There was a petition in 2001 to the

Commission to invoke RS-2477 rights; in three weeks it had 1400 signatures. He doesn't want a dogfight, but he wants to know where we're at. He is frustrated.

Commissioner Lythgoe stated that the letter that went out was a strong statement, and indicates the frustrations of the Commission and the citizens. However, they aren't going to go out and knock down barriers.

Garry Pace stated that he moved to Jefferson County in 1974 and has been involved in a lot of these issues. He does know the frustration that others have spoken of. The problem is that every two years a new travel plan comes up and each time they put a different designation on areas. He supports the Commission at least in bringing this to a head.

Leita Beardsley stated that the reason she brought the International Union for the Conservation of Nature (IUCN) documents is that the U.S. Forest Service and the U.S. Department of Interior-Fish and Wildlife Service are members. It is a requirement of membership that these agencies will not engage in any policy that goes against IUCN policy. She stated that this could explain part of the problem.

Clinton Kane stated that those in attendance might be wondering about the cards that he handed out before the meeting. In the next several months there will be a lawsuit against the federal government. He has history back to the original colonies. The Corps of Discovery saw the wealth of the lands in the west. When all is said and done, it will clear up who owns this land.

Commissioner Weber thanked everyone for coming, and noted that there obviously is a lot of interest in this issue, and people have spent a great deal of time to research and strengthen their position. As for his own frustrations, when he ran for and took office, he told himself that his frustrations could not rule what he does. He acknowledges that there is a procedure in place, and whatever discussions they have, he doesn't want to throw negotiations out the window. He sees no need to go to court; his sincere desire is to sit down and discuss this. He appreciates the comments from the different agencies that want to work together. He thinks that this can be done without a big fight.

Jim McCauley stated that they need to come to some conclusion before they all walk out the door; what is going to happen next. He asked the Commission if their position is the same now, and how they are going to pursue this. Commissioner Lythgoe stated that his position is still the same; he has heard nothing today to change that. How to pursue this he doesn't know. They need to sit down with the County Attorney and discuss this. They need to do more research. He appreciates all of the information brought forward at this meeting. Commissioner Lythgoe stated that all three Commissioners are committed to the position stated in the letter.

Commissioner Notbohm stated that he wanted to thank FWP for the response they sent. He noted that they need to hear from all the agencies, where they are coming from and where they need to go. He stated that the Commission is the governing body, and they need to work towards a conclusion.

Rick Hotaling, BLM, asked for some clarification. The Commission is looking for a response to the points in their letter, are they claiming all the roads in the County? Commissioner Weber stated that they are only claiming the roads eligible for RS-2477 status.

John Wright, from Townsend, stated that he has listened to the conversation back and forth, and he would like the Commission to give the agencies involved ten days to respond.

OPPORTUNITY FOR PUBLIC COMMENT

Marga Lincoln, *Helena Independent Record*, asked the Commissioners of their impressions of the meeting.

Commissioner Notbohm stated that he was hoping to open dialog. He would like to set up meetings for face-to-face conversation.

Commissioner Lythgoe stated that he has spoken with a couple agencies, and they would like to set up work sessions to discuss this. These will be noticed to the public. It may be best to meet with individual agencies initially, then all together in a group. He hopes that they all understand that the Commission wants to see this resolved and not drag it out for years. Judging from what they have heard from most of the public, this is a huge, huge issue. The Commission wants to see these areas open, not just for personal reasons, but for the public, access to resources, etc.

Commissioner Notbohm stated that to take this one step further, they were asked how to replace revenue from a mine. The only thing that can replace a mine is another mine. With the current restrictions, this can't happen.

Commissioner Weber stated from his perspective, he is very happy that all the agencies are in support of the Commission's stance and want to work together.

Commissioner Lythgoe stated that he looks at the growth in Lewis and Clark County - Costco, Home Depot, Lowes - these are not industry, but commercial endeavors, and the reason that taxes in Lewis and Clark are twice what Jefferson County residents pay. It has nothing to do with population. Jefferson County has three major industries, and without these, Jefferson County is just a bedroom community to Helena, Bozeman and Butte.

Marga stated that what she is hearing is two different approaches. Jefferson County wants to assert their authority on roads, but she asked about the expense of maintenance.

Commissioner Notbohm stated that Jim McCauley somewhat answered this. This is used as an intimidation tactic. Things have changed with road law, and counties are able to set maintenance levels on roads and have them non-maintained. Marga noted that someone from the Forest Service maintained that even if a road is designated as non-maintained, it can still require that some work be done. Commissioner Lythgoe agreed that this is true. If there is a boulder in the road or the road is sloughing into the creek, etc. something will of course need to be done. The Commission recognizes that the position taken will cost some money. The more important issue is that lands be opened up. This needs to happen all across the state. Commissioner Weber

stated that, corollary to that, it appears that it doesn't necessarily have to be a visible road. It could be an easement granted years ago. The county is still held liable for roads and right-of-way. Commissioner Lythgoe stated that the key word is right-of-way. What they are trying to establish is that we have right-of-way. We may not do anything along the lines of improvement, but if there is a fire, we will be able to use the right-of-way to access and fight the fire without a lot of bureaucracy. As for mine exploration, we would have the ability to get to land to do exploration. There are a lot of mining claims with their access roads closed. Commissioner Notbohm noted that this is illegal per statute.

Commissioner Lythgoe stated that budgetary concerns should never be a factor in closing a road. Commissioner Weber agreed, especially when the decision comes from the east coast.

Marga asked about the other approach mentioned, if the County wants the road, they need to go through a process. Commissioner Weber agreed that this is one thing the Commission is going to do. Marga asked if they have developed a list. Commissioner Weber stated that they haven't discussed it yet. Commissioner Lythgoe asked if it is up to the County or the agencies. Commissioner Weber stated that they set up a system where we submit a claim and they decide on the validity of the claim. His feeling is no, we aren't going to do it that way. We were granted right-of-way, and once the grantor grants right-of-way, they cannot come back and revoke it. We need to define which roads we feel were granted and exert our right-of-way. Commissioner Notbohm stated that the fact remains that there are dozens of roads out there with no names. The Forest Service has numbered some of them. There is an untold amount of roads out there. Commissioner Weber stated that he is going to be researching which roads were granted to Jefferson County. We don't need to petition for the roads, they have already been granted, and the grantor has no right to exert control. Commissioner Notbohm stated that most of the roads in the county were built before 1900 when the County was developing. After that time, gold prices went down, and no more roads were built. Commissioner Lythgoe agreed that it should be up to the agencies to prove the County wrong.

MEETING ADJOURNED

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER